

**MINUTES**  
**LEGISLATIVE FINANCE COMMITTEE**  
**MAY 16<sup>TH</sup>, 17<sup>TH</sup> and 18<sup>TH</sup>, 2005**

Representative Luciano “Lucky” Varela, chairman, called the Legislative Finance Committee (LFC) meeting to order on Monday, May 16, 2005, at 8:30 a.m., at the New Mexico Military Institute in Bates Hall, Roswell, New Mexico.

The following LFC members were present on May 16th:

Representative Luciano “Lucky” Varela, chairman, Representatives Henry “Kiki” Saavedra, Nick Salazar, Rhonda King, Jeannette Wallace, Thomas Taylor for Sandra Townsend, Brian Moore, and Edward Sandoval for Donald Whitaker, and Senator Ben Altamirano for Joseph Fidel, Senator Timothy Jennings, Stuart Ingle for Sue Wilson, John Arthur Smith, Pete Campos, Joseph Carraro, Phil Griego, and Rod Adair for Leonard Lee Rawson.

Guest legislators included Representatives Daniel Foley, Candy Spence Ezzell, and Senator Shannon Robinson, and former Representative Richard Knowles.

The following LFC members were present on May 15th:

Representative Luciano “Lucky” Varela, chairman, Representatives Henry “Kiki” Saavedra, Nick Salazar, Rhonda King, Jeannette Wallace, Larry Larranaga for Sandra Townsend, Brian Moore, and Edward Sandoval for Donald Whitaker, and Senator Ben Altamirano for Joseph Fidel, Senator Timothy Jennings, Sue Wilson, John Arthur Smith, Pete Campos, Joseph Carraro, Phil Griego, and Rod Adair for Leonard Lee Rawson.

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Chairman Varela welcomed the committee and public to the hearings. After opening remarks by Senator Timothy Jennings, Rear Admiral David Ellison, superintendent, New Mexico Military Institute, Lee Rogers, Roswell city councilman, and Harold Hobson, county commission chairman, the committee heard the following:

**LFC Minutes**  
**05/16/05 - 05/17/05**

## **BASE CLOSURE LIST CANNON AIR FORCE BASE**

Senator Altamirano briefed the committee on a radio broadcast reporting the governor and some congressional representatives would be holding a town meeting and suggested LFC write a letter in support of keeping the base open in Clovis, New Mexico. Representative Varela said it would be appropriate and the leadership should speak with all the members of the Legislature because it affects the entire state.

## **DEPARTMENT OF PUBLIC SAFETY – PERSONNEL POLICIES AND PRACTICES, COMPENSATION AND COLLECTIVE BARGAINING; REVIEW OF QUARTERLY PERFORMANCE REPORT**

Representative Varela said the purpose of the hearing was to address the issues within the department and an e-mail issued by Adjutant Chief Faron Segotta, New Mexico State Police, Department of Public Safety, (DPS) indicating concern over the Legislature short-funding DPS in the area of personal services and benefits. Some employees have indicated a lack of confidence in the DPS management. The committee would like to hear from the leadership of the department to determine if the problems are being resolved, if the grievance process is being resolved and if it is effective and fair. Representative Varela referred to a budget adjustment report (BAR) that is moving \$380 thousand this year out of the military into other costs.

Secretary John Denko, DPS, said one issue that has become a divisive matter was compensation for state police officers. Last year the chief sent a survey out with the intent to determine the answers to several issues. The lack of confidence survey was engineered by the president of the State Police Association who has since been recommended for termination and is no longer the president. The secretary said he felt this survey was a retaliatory measure designed to show disgruntlement because it concentrated on compensation. Secretary Denko said the department agrees there is a problem with compensation. State Police compensation is currently 10<sup>th</sup> in the state. Current state police officers blame the secretary and the chief for not obtaining the new pay plan. Secretary Denko referred to legislation introduced during the 2005 legislative session and acknowledged the governor had promised a 10 percent increase.

Secretary Denko said he was criticized for not communicating to the officers that at the end of the legislative session the governor fought for the 10 percent and it didn't happen. The Legislature as a body felt 5 percent was adequate. The perspective of the secretary and the chief was to be grateful for the 5 percent and that is the message being sent to the officers who will also receive an additional 0.8 percent. The department will work closely with the new association president and will try to bring another package to the Legislature in 2006 to address the issue again. Secretary Denko said he and the chief were blamed for the officers receiving only 5 percent. The association survey results were not all favorable nor disfavorable; they provided the department with information that could better the department.

Representative Varela again referred to the e-mail sent to commanders by Adjutant Chief Segotta, in which he instructed them to communicate to the officers their legislators had not supported the 10 percent salary increases. Representative Varela said perhaps some legislators had been singled out as trying to damage the department by supporting a bill requesting an oversight committee, and the Legislature supported that legislation due to concern over lack of procedures and legal process.

Responding to Representative Varela, Secretary Denko stated when he and his administration first came in, there was a backlog of internal affairs (IA) investigations of some 70 cases to 80 cases. It has taken a long time to deal with the backlog due to limited staff. The department is working as fast as it can to take care of the backlog cases. Secretary Denko said the omission of language in the department's disciplinary administrative leave policy in 1998 has been taken care of.

Representative Varela asked for comments from the LFC members.

Responding to Senator Griego with regard to the e-mail sent by Adjutant Chief Segotta, Secretary Denko said it was sent under his instructions.

Senator Griego quoted the content of the e-mail and said the department would not have received any increase if the Legislature had not supported the 10 percent increase because any increase would have been removed from the bill completely. The majority of the Legislature supported the bill that included the 10 percent increase. Senator Griego said when he introduced his pay package, it included a 15 percent increase and it would have brought back the step increases. Senator Griego said when he spoke to Secretary Denko and Chief Carlos Maldonado, New Mexico State Police, in the fall of 2004 both indicated he should move forward with the package, yet when it was introduced during the 2005 legislative session they were nowhere to be found. He suggested the governor's office may have directed DPS managers not to support the package. Senator Griego stated the fact remains the e-mail went out and it is a disgrace because it implies to state police officers that legislators do not support the state police.

Responding to Senator Griego with regard to the content of the e-mail, Secretary Denko said they did not get the 10 percent so the e-mail was factual.

Senator Griego said the field officers are under the impression the pay package was not supported by the Legislature and that is wrong. The Legislature worked diligently to obtain the best pay package possible.

Responding to Senator Griego, Secretary Denko said the majority of the Legislature must not have supported the increase because it would have passed if the support had been there.. Secretary Denko said he was told very early on by Representative Varela the increase would be only 5 percent. The officers heard the governor was very strongly supporting the 10 percent increase and the secretary was to relay that message to the officers. Secretary Denko said he was told the governor supported the 10 percent right to the end and that the Legislature prevailed because 5 percent was all the state could afford.

Responding to Senator Griego, Secretary Denko said all state police officers, entry level to the chief or director's positions, will receive 5.8 percent; Motor Transportation Division (MTD) officers and Special Investigation Division officers will receive 5 percent.

Responding to Senator Griego with regard to the starting salary for new state police officers, Secretary Denko said it was \$32 thousand.

Responding to Senator Griego with regard to step increases, Secretary Denko said the department has a pay package initially introduced this last year and it was hopeful it would pass, however it was an expensive \$8.6 million. The department has a plan that would have re-established the steps and brought the State Police up to number three in the state, however the department was told the state could not afford it.

Responding to Senator Griego with regard to officers on disciplinary administrative leave to date, Secretary Denko said there are five still on administrative leave for legal reasons. These are people who have been assigned hearing officers through the Public Safety Advisory Commission and the Attorney General's Office (AGO) and because of the legal issues involved the department cannot put them under administrative duty because it may be compromising in certain areas. The five officers have been on administration leave between six and 24 months with pay. They receive their pay increases.

Responding to Senator Griego, John Wheeler, legal council, DPS, said that when the department appeared before LFC in December 2004 this issue was discussed in length and the department stated hearing officers would be obtained and determination proceedings would start as soon as the rule was in place. Of seven officers in disciplinary proceedings, five are scheduled for hearings and one more will be scheduled next week. Those hearings are scheduled exactly like the State Personnel Office (SPO) hearing process. All parties are represented by attorneys and the process is quasi-judicial. The department is looking at hearings taking place within the next few months and appeals from there. Due process is in place, but it is not a short process. There is one lawsuit pending with regard to property right of an officer.

Senator Griego said the department has a problem with morale and, if it is not solved, the department faces unionization. He suggested a corrective memo be issued to the officers explaining the Legislature supports them and the pay package, but due to the amount of funding allowed during the legislative session, 5 percent was all that could happen.

Gene Moser, principal analyst, LFC, said at the request of the committee he looked at personnel policies and practice within the department. In looking at the personnel policy, it was noted the department has an administrative policy manual broken down to a number of sections, personnel being one of them. The section does not comprise all the policies from the department, which makes it difficult for employees to assess the information.

Responding to Representative Varela, Mr. Moser said to review the DPS manual he studied the SPO policy manual and called on his 30 years in writing both public sector and private personnel policy manuals. Mr. Moser looked at the policy from an employee's point of view as to where could the employee can find information readily. In a number of cases the policies had not been reviewed for a number of years and some had not been reviewed since early 1990s. References did not flow and could be confusing. In addressing the issue of discipline and due process, the main distinction between commissioned officers and employees covered by the state personnel system is that commissioned officers cannot be terminated until after all their due process requirements have been completed. Under the SPO system, permanent employees may be terminated and then their appeal process starts.

Responding to Representative Varela with regard to what authority the commission has, Mr. Wheeler said the statute Section 29-2-11 NMSA 1978 is broken into two parts. The first states the Public Safety Advisory Commission was created in 1987 and is administratively attached to DPS; it is represented by

the assistant attorney general and is a separate quasi-judicial body. For discipline under 30 days, that body has the right only to review the discipline.

Mr. Moser said with respect to the policy on suspensions less than 30 days, it was his opinion the policy should reflect the statute and state the officer can request a review by the commission. With respect to dismissals, demotions and suspensions greater than 30 days, Mr. Moser stated the policies lack clear formulation and direction. The policy does not include any outline with regard to discipline. Mr. Moser said grievance procedures need clarification.

Mr. Moser said with respect to collective bargaining, the move and the shift as reflected in the employee surveys, is towards unionization. Unions usually form due to poor employer relations and failure to address the employee claims. These things push and motivate employees towards unionization.

Renada Peery, fiscal analyst, LFC, reviewed MTD officer authority with the committee.

In 1998, the Motor Transportation Division (MTD) was statutorily transferred from the Taxation and Revenue Department to DPS. Prior to this transfer, MTD had statutory authority to enforce the Controlled Substances Act and the Criminal Code. Upon incorporation into DPS Sections 65-1-6 and 65-1-7 NMSA 1978 were amended to read as follows:

*“The Department shall:*

- A. Enforce in the field the provisions of the Motor Carrier Act and the regulations promulgated by the Public Regulation Commission to that act; and*
- B. Maintain sufficient personnel in the field to enforce the provisions of the Motor Carrier Act and the regulations promulgated by the Public Regulations Commission pursuant to that act.*

*The enforcement employees the division designates by the director of the division are police officers as defined in NMSA Section 29 Chapter 7 Article 7.”*

The current statutes give MTD officers authority to enforce the Motor Carrier Act as peace officers but do not grant authority to enforce the Criminal Code.

It is the position of DPS that MTD officers, as peace officers, may take emergency action as needed, which may include enforcement of other laws. MTD officers in the course of their duties must deal with drug trafficking, drug usage, concealed identity and other issues under the Criminal Code. MTD officers also are required to serve as backup for the State Police and other law enforcement agencies dealing with issues such as domestic violence, theft and aggravated assault. The department further indicates that MTD officers should focus on the enforcement of the Motor Carrier Act regarding safe, effective, and efficient enforcement of the transportation laws and regulations.

During the 2005 legislative session, House Bill 669 and Senate Bill 395 proposed giving MTD officers the authority to enforce the Criminal Code. DPS analysis of the proposed bills stated the department felt the proposed legislation would diminish and dilute the capacity of MTD to enforce the laws for which they were created. Both House Bill 669 and Senate Bill 395 failed to pass the Legislature.

**Key Quarterly Measures.** Current DPS key quarterly measures for the law enforcement program only address the goal of reducing DWI. The key quarterly measures do not cover reduction of crime or other

critical goals. However, DPS does collect internal performance measure data that aligns to their following key initiatives and goals:

- Reduce DWI, alcohol abuse, and underage alcohol consumption.
- Reduce illegal drug abuse and narcotics-related crimes.
- Reduce violent crime, domestic violence, and crimes against children.
- Ensure traffic and highway safety.
- Increase emergency preparedness to prevent terrorist attacks and improve emergency response to disasters.

LFC acknowledges DPS is moving toward improved performance measures by aligning the measures to its key initiatives and goals. However, for two years in a row the performance measures have changed, creating challenges to benchmarking data. LFC is committed to working with DPS in the process of developing meaningful performance measures.

Chief Carlos Maldonado, New Mexico State Police, DPS, said the movement across the nation, particularly in law enforcement, is to unionize. The surveys are a tool to encourage that for a variety of reasons. Chief Maldonado said he would do what he could to make incremental systemic change within the organization. With regard to policies and procedures the department is part of a national accreditation process. The Commission on the Accreditation of Law Enforcement Agencies develops industry standards and sends teams to evaluate organizations in terms of policies and procedures. The department admits with regard to a lot of its policies and procedures, some do not exist or have fallen off the radar screen over the last few years. DPS is trying to be proactive in taking a stance and it is costing money, but the department is willing to make the investment to build a public trust with the legislative body and the communities it serves. The department has embarked on a community policing program.

Responding to Senator Carraro with regard to the cost-to-date for the administrative leave, Secretary Denko said it was probably \$400 thousand.

Responding to Senator Carraro with regard to the former State Police Association's president's recommendation for termination, Secretary Denko said it was recommended several months ago at least. Senator Carraro said that when he met with the officers they said that is what happens when you cross the secretary and the chief, and at the time of the survey he said he was not in line to be terminated.

Representative Varela said with regard to subpoena powers of the committee and possibly invoking that power with officers, this is a consideration when so many different stories are heard. LFC also has the power to put individuals under oath. When it gets to that point, things are pretty bad. Representative Varela said he would be speaking with House Speaker Ben Lujan and the Senate President Pro-Tem Ben Altamirano with regard to the issues of the department and if it is necessary to invoke the powers of LFC to subpoena and put individuals under oath.

Responding to Senator Smith with regard to the DPS budget hearing in 2004 and what increase was included in the budget request, Secretary Denko said there was no request for a pay increase because the department was told their budget was to be flat and that the pay increase would be taken care of during the Legislature.

Responding to Senator Adair referring to a briefing item attachment, where FY98 was the base year for comparing officer strength for the force, by having FY98 as the base year, it masks the actual management under this administration. The chief's office has exploded in FTE from 4 to 11.

Responding to Senator Adair with regard to where the 11 FTE reside, Secretary Denko said due to lack of support staff, higher ranking officers have had to take up the workload.

Responding to Senator Adair with regard to the increase in the chief's staff from 2003 and how the office survived without more staff in prior years, Chief Maldonado said the 11 FTE are the adjutant chief, two deputy chiefs, two inspectors, three majors, two captains, and one lieutenant.

Responding to Senator Adair with regard to the e-mail, Adjutant Chief Segotta said he was the author and he wrote it after meeting with Secretary Denko.

Senator Adair questioned the involvement of the secretary with the issuance of the e-mail because the sentence in reply to the secretary from Adjutant Chief Segotta says "Sir below is the e-mail that went out" and the original e-mail did not carbon copy the secretary. Senator Adair said the comments were fine for a legislator because they are highly politicized and the adjutant chief had un-professionalized the State Police. Senator Adair told the adjutant chief he had a reputation for partisanship. The e-mail underscores that reputation.

## **BEHAVIORAL HEALTH/COLLABORATIVE AND TRANSITION TO SINGLE ENTITY, VALUEOPTIONS**

Leslie Tremaine, the director of the behavioral health initiative, reviewed objectives for the hearing with the committee: why change was needed, key legislation and executive directives, vision, accomplishments, collaborative structures and membership, transition goals and process, phase one priorities, beyond phase one and lessons learned.

Ms. Tremaine said services were often insufficient and inappropriate, agencies lacked common goals, resources were not being maximized across funding streams, and programs were fragmented, disconnected and duplicated, resulting in higher administrative costs for providers. The vision is quality behavioral health care that promotes recovery for all. The state is designing a single behavioral health delivery system in which available funds are managed effectively and efficiently, support of recovery and resiliency is expected, mental health is promoted, adverse effects of substance abuse and mental illness are prevented or reduced, and customers participate fully in the life of their communities.

Ms. Tremaine said accomplishments include the establishment of the Behavioral Health Purchasing Council (BHPC), activation of cross-agency staff workgroups, ongoing development of local collaboratives, including Native American, within six regions, ongoing sharing of resources, development of common service definitions, and implementation of a contract with ValueOptions. Ms. Tremaine reviewed the working structures being developed. Transition goals include ensuring customers and their families are served with a smooth transition, providers continue to be paid in a timely manner, data is collected and reported, and performance and outcomes are maintained as they have been up to this point. The transition process has involved a partnership with state staff readiness review teams helping ValueOptions be effective in the initial transition.

Pam Galbraith, CEO, ValueOptions, said ValueOptions will have offices in six locations across the state with administrative headquarters in Albuquerque and Santa Fe as well as regional offices in Farmington and Santa Fe. Statewide meetings with providers will begin on May 17. Contracts are being prepared for providers and statewide consumers meetings around the state are planned.

Secretary Pam Hyde, Human Services Department (HSD), said the country is watching New Mexico, which means the state is receiving a lot of support from national researchers and mental health and behavioral health leaders.

Responding to Representative Varela with regard to the collaborative and state law, Ms. Tremaine said the collaborative as a whole is in charge and that she is responsible for coordinating the activity across all agencies.

Responding to Representative Salazar with regard to private sector not being included in the decision-making board, Michelle Lujan-Grisham, secretary, DOH, said an issue has been the potential for conflicts of interest, particularly with the regional coordinated care system, where entities largely made up of providers then made decisions about accountability, quality, oversight and contracts. With the new system, providers have a role in identifying issues and gaps in services, and they must do that with other partners through local collaboratives in each of the judicial districts. They are not allowed to be in a decision-making setting. The funders, which are each of the agencies on the collaborative, hold the statewide entity accountable and make those decisions.

Responding to Representative Heaton, Ms. Hyde said part of the local collaborative's role is to bring in other representatives: individuals representing juvenile justice, local jails, local schools, consumers and families locally, health councils, maternal and child health councils, alliances, local hospitals, local physicians and local behavioral health providers. Their function is to plan and look at needs locally. They will be provided with data about their local area, such as service utilization, service needs, services denials and service complaints.

## **STATE COVERAGE INITIATIVE IMPLEMENTATION WITH ANTICIPATED COSTS BENEFITS AND DELIVERY STRUCTURE**

Hyde said the department is working closely with the University of New Mexico Hospital to conduct a pilot of the project. Ms. Hyde said the department had formed the Insure New Mexico Council, which conducted many surveys to look at the uninsured issues in New Mexico. There were 29 recommendations to decrease the rate of people without insurance and increase the number of small employers who offer insurance. There were four pieces of legislation passed and in addition to those there were two other initiatives, one is the State Coverage Insurance (SCI). The department is also conducting increased outreach for Native American and Hispanic children as part of the Insure New Mexico package. The SCI program is now conceived as part of the total package and is critical because it will use the Health Insurance Alliance as a hub and a clearing house for small businesses that want to obtain insurance through any of the various options created during the last legislative session. Ms. Hyde reviewed the options for small employers with the committee.

Mary Spaulding Bynon, head of SCI, said SCI allows affordable healthcare coverage to low-income working adults through an employer-based system. Programs will be partially funded using funds from the State Children's Health Insurance Program (SCHIP) at an 80.36 percent federal match rate. The



Health Insurance Portability and Accountability Act waiver was authorized by the federal government to approve the program, which allowed flexibility in both population and benefit design. Ms. Spaulding Bynon said the program is open to adults ages 19 to 64 (with or without children), employers who have not provided insurance to their employees in the last 12 months and uninsured employees with family incomes up to 200 percent of the federal poverty level.

Ms. Spaulding Bynon said benefits included under the plan are hospital, emergency and urgent care, primary and specialty care, preventive and women's health services, pharmacy, behavioral health, durable medical equipment and supplies, and laboratory work. SCI is a managed-care model contracted through organizations that meet federal guidelines and have successfully bid on the program. Announcement of successful bidders is pending finalization of contracts. Enrollment is coordinated with the Income Support Division. The projected enrollment in year one, FY06, is 10,000. Ms. Spaulding Bynon said marketing and outreach are important to the program. Ms. Spaulding Bynon also reviewed a pilot program with UNM Hospital.

## **NEW MEXICO MILITARY INSTITUTE OVERVIEW AND INITIATIVES**

Rear Admiral David Ellison, superintendent, New Mexico Military Institute (NMMI), said when he arrived at the institute he felt it was important to conduct a zero-based assessment. Last fall the institute set out to develop an in-depth strategic planning process. Strengths were found in the academic area; however, leadership and fiscal education programs have not kept pace with the academic programs. In support areas, the business processes training was lacking in the area of allowing employees to grow. Compensation had also fallen behind and a tuition increase will help to address that issue. In the area of institution advancement and enrollment, it was determined NMMI had not paid much attention to the use of technology; as a result, enrollment has decreased somewhat. In all areas, changes are being made to address the issues. Admiral Ellison reviewed scholarship and internship initiatives with the committee.

**On Tuesday, May 17<sup>th</sup>, the committee met at the New Mexico Rehabilitation Center in Roswell. Chairman Varela called the meeting to order at 9:00 a.m. in the Staff Development Room of the facility.**

## **NEW MEXICO MORTGAGE FINANCE AUTHORITY HOUSING TRUST FUND INITIATIVE**

Linda Kehoe, principal analyst, said the hearing would be an update of two major pieces of legislation passed during the 2005 legislative session and how it affects affordable housing in New Mexico.

Erin Quinn, director, senior policy and program advisor, New Mexico Mortgage Finance Authority (MFA), Homeownership and Policy Development, said Senate Bill 115 created the New Mexico housing trust fund, funded by a \$10 million capital outlay appropriation within Chapter 347, compliments the Affordable Housing Act by providing an exemption in the anti-donation clause for affordable housing. The act allows state and local governments to contribute land, buildings or infrastructures for affordable housing projects in their communities. MFA will serve as trustee and administrator for the housing trust fund, and the State Investment Council (SIC) will serve as the investment agent. Initial emphasis of the program will be on workforce housing development for single-family housing for people who work in a certain community, such as teachers and law

enforcement. The leverage requirement on an aggregate basis is a 3:1 ratio, which means funds from the housing trust fund must be matched 3:1 by other funding sources. MFA is developing program guidelines and policies. Ms. Quinn reviewed examples of ways MFA envisions the trust fund will be used, such as gap financing for workforce housing development, purchase of low-interest rate mortgages, equity enhancements for assisted-care facilities, other senior housing activities, and revolving loan pools for owner-occupied rehabilitation or other housing emergency assistance.

Ms. Quinn said HB410 creates the affordable housing tax credit, is a charitable tax credit model unlike the federal tax credit. For every dollar the donor receives 50 cents in credit toward state tax liability. Credits are transferable one time only and are valid for five years.

Ms. Quinn reviewed implementation plans with the committee for both the housing trust fund and the housing tax credit with the committee. The fund includes advisory appointments, public input funding priorities, and program guidelines and application. The credit includes program guidelines, policies and application, information systems compatibility with the Taxation and Revenue Department, and marketing and education.

Responding to Representative King, Ms. Quinn said the habitat homes typically sell for more than \$50 thousand. The average appraisal value is \$80 thousand.

Responding to Representative King, Ms. Quinn said last year MFA purchased 23 loans from Habitat for Humanity affiliates statewide, totaling \$1.4 million.

Responding to Senator Griego about dissemination of information with regard to MFA housing programs, Ms. Quinn said it is continuing challenge for MFA. MFA does not administer funds directly to the consumer and so the challenge is to reach out to lenders in the state. Lenders from various areas have indicated they do not want to participate in the program but that some individuals choose other programs and the lenders do not want to sell their loan.

Responding to Representative Larranaga, Ms. Kehoe said the language reads “affordable housing projects are defined as land acquisitions, construction, conversion or weatherization for residential housing,” including both single-family and multifamily housing, “in a county with a population of less than 100,000 according to the most recent federal consensus.” This legislation was supported and proposed through by the Governor’s Investment Plan and the original legislation as introduced did not seem to distinguish the difference. In the governor’s proposed plan, there could be multi-family housing or single-family housing anywhere in the state, however, somewhere along the way it was amended to exclude those four counties.

The committee members took a tour of the Southern New Mexico Rehabilitation Center, guided by hospital administrator Laurie Brannigan. The members were shown the outside of the facility to demonstrate the lack of security. Ms Brannigan commented, because there is no outside barrier, the center staff finds drug and alcohol paraphernalia in many of the bushes around the facility. Inside, members were shown both the physical rehabilitation area and the substance rehabilitation area of the facility, located on different floors. Members commented on the varying temperature from room to room and were shown window leaks, ADA space compliance issues, and the unrealistic layout of the facility, where physical rehabilitation patients must travel down long halls to get to the physical therapy room or the swimming pool and hospital administration staff is across the facility from patient rooms,

making it difficult to get to patients in an emergency. Ms. Brannigan commented she would like to move to the other side of the Industrial Air Center campus to share facility space with ENMU.

Upon returning from the tour and lunch the committee recessed to attend the LFC Performance Review Subcommittee and the Audit/Computer/Capital Projects Subcommittee meetings.

## **MISCELLANEOUS**

### **Minutes.**

Representative Varela presented the April minutes for approval; Senator Altamirano moved to approve the minutes, Representative Moore seconded the motion, and the motion passed with no objections.

## **PECOS RIVER COMPACT STATUS REPORT/ STATEWIDE WATER CONDITIONS**

Jim Dunlap, chairman, Interstate Stream Commission, noted one of the first items the ISC was charged with by the governor was the development of a State Water Plan, with a deadline of one year after he came into office. ISC staff held 29 public meetings across the state in that first year to meet the requirement. The State Water Plan was then used in the development of the agency strategic plan. In the northwest corner of the state, the commission has been involved in the Navajo water rights settlement for 11 years and has worked hard to see it successfully negotiated. The agreement has been approved by the Navajo Nation and the state and has been turned over to the federal government for their approval and input. The commission believes it is a fair and just settlement that will protect senior water rights that exist in the area as well as provide water to junior users in the area during times of shortage. The Animas River supply project is currently being built jointly with the state of Colorado to supply municipal/industrial water for drinking water purposes although it originally started out as an irrigation component. The cost for the project was \$179 million which in those days was a tremendous amount of money and still is. Since original design, the irrigation component has been dropped and the project has gone to over \$500 million. The area has paid its own way. Mr. Dunlap reviewed the San Juan Basin and Gila River projects with the committee. This last year the legislature passed the Strategic Water Reserve which the commission believes is a great tool for the state. The commission is in the process of developing a workshop for the Interstate Stream Commission on the reserve and criteria, goals and a working plan have been developed to carry out the project. Oversight on contracts is ongoing by staff. This hearing is to discuss implementation of the Pecos Settlement which has been a major focus. Last year the commission defeated the objections to the partial final decree which enabled the commission to begin to close on land deals and to date has purchased one thousand acres of land.

Vice Chairman Phelps White of the Interstate Stream Commission said he represents the Middle Pecos River Valley on the Interstate Stream Commission, which essentially represents the Artesia Basin and its 100 thousand acres of water rights. It is a large segment of the total water rights in New Mexico and is one which is very important to the entire state of New Mexico. Mr. White said with regard to the issues on the Pecos river, the Supreme Court awarded Texas a certain amount of water that had been under delivered historically, New Mexico prevailed in the judgment because Texas had originally sued New Mexico for about three times the amount of water that was finally agreed upon. The cash settlement agreed upon made up for the shortfall for a period of 34 years beginning with the advent of the Pecos River Compact. The New Mexico Interstate Stream Commission had the money in the bank and provided a check the next day for \$14 million. That left a shortfall of 10,000 acre feet per year. Some

years ago the commission contracted for a study to be conducted to look at all the options that might be available to resolve this dilemma. One of which was a priority call on the river which was perhaps the worst scenario that was suggested. Under the scenario, it would have cost the state \$300 million in the first year. The most favorable scenario is one currently being implemented involving the acquisition of water rights and land up and down the river in the Roswell, Artesia and Carlsbad areas.

Estevan Lopez, director, Interstate Stream Commission, reviewed the 2005 projected reservoir levels with the committee. Over the last several years there has been concern over Navajo reservoir possibly dropping down below the usual pool? Luckily the water users in that part of the state came together and agreed upon some shortage sharing arrangements should they be needed. There has been an incredible turnaround with the snow received this last winter in the San Juan Mountains in Colorado with projected stream flows for runoff this year at about 166 percent of the 30 year average. As a result, Navajo Lake should fill to approximately 95 percent of capacity this year. With regard to the Gila River, early this spring there was heavy flooding that took place. Ute reservoir is expected to store 80 percent of the 200 acre feet allowed for storage. With regard to the Rio Grande, run off projections are running about 140 percent of the 30 year average which means there is a potential for flooding this year. There are some areas on the Chama River where over the course of the last 10 dry years people have built right next to the river and sometimes in the levies which has the potential to cause problems for these individuals. On the Rio Chama there are a number of acequias the commission has been working with to protect their diversion structures. Mr. Lopez said just above Elephant Butte at San Marcial, a railroad bridge spanning the river is of major concern. There is so much sediment in the river at that point the river has been rising over the last number of years. These effects have raised the level of the river to the point it is where it is lapping the bridge. The bridge itself has been raised several times and cannot be raised further. There is a plan over the course of the next few years to work with the corps of engineers to move the bridge and ensure capacity is increased. Levies in this area that are seeping are also currently being monitored due to the dangers of them breaking.

Mr. Lopez said New Mexico has been operating under Article 7 of the Rio Grande Compact which means, Elephant Butte reservoir has been below a minimum of 400 thousand acre feet prohibiting New Mexico from storing water in upstream reservoirs built after the compacts were entered into. Once the state delivers a usable supply to Elephant Butte which exceeds 400 thousand acre feet, storage of water will begin which will help the entire state. Abiquiu and Cochiti reservoirs are largely flood control dams and will generally remain at current levels. The current projections are that Elephant Butte will probably reach 29 percent of capacity by July 4<sup>th</sup>. As a result of storing water in the northern reservoirs, the Middle Rio Grande Conservancy District should have a full supply this year. This year run off has been exceptional. In the 1950's in the middle of the drought there was a year with a lot of snowfall and rain, the subsequent four to five years the state went back into a drought for several years and that could happen again.

Mr. Lopez reviewed the Pecos water situation for the current year. The lower Pecos system is comprised of Santa Rosa and Sumner reservoirs and the river below these dams to the state line.. All of the reservoirs on the Pecos system are either full or close to full this year. The run off projections are at about 200 percent in the lower Pecos valley. The state is doing very well in terms of water supply for all of the users in the basin. In 1988 the Supreme Court ruled in favor of Texas and directed New Mexico from there on every year to make its water deliveries in a timely fashion. This needs to be accomplished in a timely fashion or a court appointed federal water master would do it for the state. Last year at the end of 2003 New Mexico had a credit status of 8,300 acre feet. At the end of 2004 the

federal river master has released preliminary numbers relative to his projections for the compact status, where it is anticipated the credit will grow and bring the cumulative total to 17,000. Mr. Lopez noted the only way the state reached the 83 hundred acre feet was through the leasing efforts last year. The state leased between 20 and 25 thousand acre feet of water. The goal continues to be to increase the existing credit.

Responding to Representative Varela with regard to the projections for 2005, Mr. Lopez said it is fairly early to make projections, however, given the way the compact works the year is shaping up fine.

## **PANEL DISCUSSION--PECOS RIVER SETTLEMENT ISSUES, IMPACTS AND LONG TERM EFFECTS**

Mr. Lopez reviewed the history and conditions of the settlement with the committee. In 2001 the Interstate Stream Commission established an ad hoc committee of the water users in the lower Pecos valley as the commission anticipated the state would not be able to meet the compact obligations. The committee was asked to work on two missions: how they could meet the obligations for that year and to work on a long-term solution to solve the problem once and for all. By January of 2002, the committee had reached what came to be known as the Pecos Consensus Plan. This plan was presented to the legislature, and what is called for was that the state undertake a purchase program to purchase land and water rights, drill wells and transfer some of the water rights to the wells so the state could pump water into the river quickly if needed to meet the state's obligations. The legislature reviewed the plan and provided an appropriation for the consensus plan to begin to be implemented; however, they also provided stringent conditions before the money could be used for that purpose. They included resolving the long standing adjudication and litigations that had been going on in the Carlsbad Irrigation District, (CID) known as the Lewis Adjudication, that had been going on since the 1950's. By March of 2003, they had reached a settlement that would allow the settlement of the Lewis Adjudication, and would lay out the specific details of how the state should purchase land and water rights, in what proportion to the overall land available it would purchase, how to drill the wells and what capacity the well fields would have, how it would benefit the deliveries to the state line, how it would benefit the downstream senior users and how we would interface with the bureau of reclamation given that CID is a federal bureau irrigation project. The state has to interface with the Bureau of Reclamation to do what it needs to do. The parties, the state, the CID, the Pecos Valley Artesian Conservancy District, (PVACD) and the Bureau of Reclamation were able to reach an agreement in March 2003. The agreement called for the state to meet certain conditions for the settlement that is in effect. The three conditions required were the state purchase a minimum of 7,500 acres in the PVACD and a minimum of 4,500 acres in the CID, develop a augmentation well field to pump and deliver water directly in the river with a capacity of 15,000 acre feet per year, required that by August 2006 the state complete two environmental impact statements working with the Bureau of Reclamation. The third condition was there had to be an entry of a partial final decree in the Lewis Adjudication. The last condition was challenged initially, two of five protests remained and in December of last year those issues went to court and the court ruled in favor of the state. There are still two protestors, however the partial decree has been entered and therefore, the state may begin its purchase program.

Mr. Lopez said when the Interstate Stream Commission put out requests for bids to purchase the land requested it received sufficient offers. Mr. Lopez reviewed the purchase contract status to date with the committee. The minimum for the PVACD is 7,500 acres and the minimum for the CID is 4,500 acres for a total of 12,000 acres. The state will have to purchase 12,000 acres in the Roswell Artesian basin

and 6,000 in CID for a total of 18,000 acres. Mr. Lopez reviewed the negotiated contracts, executed contracts and closed contracts with the committee. There are a total of 9,600 acres where the seller has agreed to the terms with regard to negotiated contracts. Mr. Lopez reviewed the land/water rights acquisition due diligence costs to date with the committee including water rights abstracting and analysis, environmental work and transferability analysis, with a total cost to date of just under \$500 thousand. Mr. Lopez also reviewed cost components to date including initial acquisition strategy contract negotiations, closing transactions, project management and project administration for a total of \$668 thousand for 2.4 percent of contracted acreage cost.

Mr. Lopez reviewed the consensus and expenditure plan and encumbrances to date with the committee with regard to augmentation wells and pipelines, water acquisition agreements and professional services. Mr. Lopez also reviewed the augmentation well field capacities with regard to the Hagerman Irrigation Company, Lake Arthur, Seven Rivers area. Present total capacity is 7,000 acre feet, with a total potential capacity of 20,600 acre feet. Mr. Lopez referred the committee to their handouts which included a map of the Seven Rivers area augmentation well field, CID augmentation pumping from PVACD, direct deliveries to state line under settlement agreement, average annual water budget, Pecos river cumulative delivery departures from obligation, 1952-2004, Pecos river current 2005 water supply conditions, estimated state line delivery requirements and use of CID water allocated to ISC lands.

Fred Hennighausen, Counsel, PVACD; said with the initiation of the PVACD and the cooperation of the State Engineer all rights to ground water uses in the Roswell/Artesia area ground water basin have been adjudicated, limited certain amounts and metered since 1966. Mr. Hennighausen said the area had felt the impacts of what has been done so far with the purchase of water rights made by both ISC and PVACD.

Tom Davis, Executive Director, CID said CID is entirely dependant on surface water, there are no wells. In 1991 the state engineer was desperate in the latter part of the year after the preliminary calculations of that year indicated the state would fall below the zero mark in the deliveries to Texas and that would kick in a priority call by the federal river master to shut down all the rights of the Pecos river basin according to priority. The state engineer came to the board and at his request CID dumped 41,000 acre feet into the river from its reservoirs to keep the state from dropping below the zero level and a positive delivery to the state of Texas was maintained. The water was recuperated the following year. The settlement agreement is the solution to the state line delivery.

Responding to Representative King with regard to costs outlined, Mr. Lopez said they are costs to date including all the costs associated with the contracts and a significant of costs associated with negotiated and executed contracts.

Responding to Senator Altamirano with regard to the Pecos settlement and how long if ever it would take to get even. Mr. Lopez said as long as the state stays at zero or above it is in compliance with the settlement.

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Chairman

Date

**LFC Minutes**  
**05/16/05 - 05/17/05**